

**AGREEMENT**  
**BETWEEN**  
**THE CITY OF FRISCO, TEXAS (CITY)**  
**AND**  
**FREESE AND NICHOLS, INC. (CONSULTANT)**  
**FOR**  
**ENGINEERING**  
**DESIGN SERVICES**

Made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Nine:

**BETWEEN** the City:     **The City of Frisco, Texas**  
6101 Frisco Square Boulevard  
Frisco, Texas 75034  
Telephone: (972) 292-5412  
Facsimile: (972) 292-5016

and the Consultant:   **Freese and Nichols, Inc.**  
1701 North Market Street, Suite 500  
Dallas, Texas 75202  
Telephone: (214) 217-2200  
Facsimile: (214) 217-2201

for the following Project:   **Engineering Design and Preparation of Construction Documents for FM 3537 20-Inch and 24-Inch Water Improvements (Preston Road to Custer Road)**

The City and the Consultant agree as set forth below.

**THIS AGREEMENT** is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **Freese and Nichols, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Agreement."

**WHEREAS**, the City desires to engage the services of the Consultant to design and/or prepare construction documents for the FM 3537 Twenty-Inch (20") and Twenty-Four-Inch (24") Water Improvements (Preston Road to Custer Road), hereinafter referred to as "Project;" and

**WHEREAS**, the Consultant desires to render such professional engineering services for the City upon the terms and conditions provided herein.

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:**

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**ARTICLE 1  
CONSULTANT'S SERVICES**

- 1.1 **Employment of the Consultant** – The City hereby agrees to retain the Consultant to perform professional engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the City.
  - 1.2.1 **Requirement of Written Change Order** – "Extra" work, or "claims" invoiced as "extra" work, or "claims" which have not been issued as a duly executed, written change order by the Frisco City Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Frisco City Council's authorization for the Frisco City Manager to execute said change order.
  - 1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE FRISCO CITY MANAGER.** Project Managers, Superintendents, and/or Inspectors of the City are not authorized to issue verbal or written change orders.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B" and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than September 30, 2011.

## **ARTICLE 2 THE CITY'S RESPONSIBILITIES**

City shall do the following in a timely manner so as not to delay the services of Consultant:

- 2.1 **Project Data** – The City shall furnish required information, that it currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.
- 2.2 **City Project Manager** – The City shall designate, when necessary, a representative authorized to act on the City's behalf with respect to the Project (the "Project Manager"). The City or such authorized representative shall examine the documents submitted by the Consultant and shall render any required decisions pertaining thereto as soon as practicable so as to avoid unreasonable delay in the progress of the Consultant's services. The Project Manager is not authorized to issue verbal or written change orders for "extra" work or "claims" invoiced as "extra" work.

## **ARTICLE 3 CONSULTANT'S COMPENSATION**

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be as follows: Basic Services are to be paid on a Lump Sum Basis, for an amount not to exceed Two Hundred Seventy-Nine Thousand One Hundred Seventy-Eight and 00/100 Dollars (\$279,178.00), and Special Services are to be paid on a Cost-Plus Multiplier Basis, for an amount not to exceed Two Hundred Sixteen Thousand Five Hundred Fifty-Two and 50/100 Dollars (\$216,552.50), ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B."
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final five percent (5%) of the Consultant's Fee allocated for Basic Services, or Thirteen Thousand Seven Hundred and 00/100 Dollars (\$13,700.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the “Contractor”) and the City, and upon receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for the City to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from the City. City and Consultant agree that if requested by the City, completion of this task shall be included in the Consultant’s Fee and considered to be within the Scope of Services as defined under this Agreement.
- 3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and to participate in consultation with said agencies in order to obtain all necessary approvals and/or permissions. The Consultant shall be responsible for preparation and timely submittal of documents required for review, approval, and/or recording by such agencies. The Consultant shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by such agencies at no additional charge to City.
- 3.1.4 **Substantial Compliance with Architectural Barriers Act** – Should the Project fall within the regulatory requirements of the Texas Architectural Barriers Act, Chapter 68 Texas Administrative Code , as it exists or may be amended (the “Barriers Act”), as solely determined by the City, Consultant shall comply with the Barriers Act. As part of the Scope of Services defined in this Agreement, it is the sole responsibility of the Consultant to identify and analyze the requirements of the Barriers Act and to become familiar with the governmental authorities having jurisdiction to approve the design of the Project. Consultant shall participate in consultations with said authorities in order to obtain approval for the Project. As part of the services provided under the Consultant’s Fee, the Consultant shall obtain the Notice of Substantial Compliance for the Project from the Texas Department of Licensing and Regulation (the “TDLR”). The Consultant shall, without additional compensation, immediately correct any errors, omissions, or deficiencies in the design services and/or construction documents identified by TDLR and/or a Registered Accessibility Specialist (“RAS”) at any phase of the Project, either by review of the construction documents, or inspection of the

Project at the commencement of construction, during the construction of the Project, or at the completion of construction.

- 3.1.4.1 **Submission of Construction Documents to TDLR** – The Consultant shall mail, ship, or hand-deliver the construction documents to TDLR not later than five (5) calendar days after the Consultant issues the construction documents for the Project.
- 3.1.4.2 **Completion of Registration Form to TDLR** – Consultant shall complete an Elimination of Barriers Project Registration Form (The “Form”) for each subject building or facility within the Scope of the Project, and submit the registration form(s) along with the applicable fees not later than fourteen (14) calendar days after the Consultant completes the submittal of the construction documents to TDLR.
- 3.1.4.3 **TDLR Approval of Construction Documents** – After review of the construction documents by TDLR, the Consultant shall be notified in writing of the results; however, it is the Consultant’s responsibility to obtain TDLR’s written comments. The Consultant shall address all comments that prevent TDLR approval of the construction documents, including comments relating to Conditional Approval that must be addressed in the design and construction of the Project. Consultant shall resubmit construction documents to TDLR for review prior to the completion of construction of the Project.
- 3.1.4.4 **TDLR Project Inspection** – Consultant shall request an inspection from TDLR or a TDLR locally approved RAS no later than thirty (30) calendar days after the completion of construction of the Project. The Consultant shall advise the City in writing of the results of each Project inspection. City reserves the right to verify the written results with TDLR at any time during design, construction, or at the completion of the Project.
- 3.1.4.5 **Corrective Modifications following TDLR Project Inspection**
  - When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide the Consultant a list of deficiencies and a deadline for completing the modifications. Consultant shall provide the City with this list within five (5) calendar days of receipt. It is the sole responsibility of the Consultant to completely address the deficiencies by the stated deadline or to obtain a written notice of extension from the TDLR. When the corrective measures have been completed, Consultant shall provide the TDLR

(and/or the RAS who completed the inspection) and the City with written verification of the corrective measures completed.

- 3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final five percent (5%) of Consultant's Fee allocated for Basic Services, or Thirteen Thousand Seven Hundred and 00/100 Dollars (\$13,700.00) shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project.

- 3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment.

- 3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the City, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:

- 3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."
- 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
- 3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

- 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
- 3.3.5 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.
- 3.3.6 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to City.

**Hourly Billable Rates by Position**

<i>Name</i>	<i>Position</i>	<i>Hourly Rate</i>
--	PRINCIPAL	\$ 225.00 - \$ 285.00
--	GROUP MANAGER	\$ 205.00 - \$ 285.00
--	SENIOR ENGINEER	\$ 150.00 - \$ 245.00
--	ENGINEER (PE)	\$ 115.00 - \$ 170.00
--	ENGINEER (EIT)	\$ 85.00 - \$ 130.00
--	HYDROLOGIST	\$ 65.00 - \$ 150.00
--	ELECTRICAL ENGINEER	\$ 85.00 - \$ 200.00
--	MECHANICAL ENGINEER	\$ 85.00 - \$ 200.00
--	SENIOR ENVIRONMENTAL SCIENTIST	\$ 115.00 - \$ 220.00
--	ENVIRONMENTAL SCIENTIST	\$ 60.00 - \$ 130.00
--	ARCHITECT (AIA)	\$ 105.00 - \$ 245.00
--	ARCHITECT INTERN	\$ 60.00 - \$ 120.00
--	LANDSCAPE ARCHITECT	\$ 115.00 - \$ 145.00
--	SENIOR URBAN PLANNER	\$ 125.00 - \$ 200.00
--	URBAN PLANNER	\$ 70.00 - \$ 120.00
--	SENIOR CONSTRUCTION CONTRACT ADMINISTRATOR	\$ 110.00 - \$ 195.00
--	CONSTRUCTION CONTRACT ADMINISTRATOR	\$ 75.00 - \$ 150.00
--	GIS COORDINATOR	\$ 90.00 - \$ 130.00
--	GIS ANALYST	\$ 60.00 - \$ 130.00
--	DESIGNER	\$ 90.00 - \$ 145.00
--	TECHNICIAN	\$ 65.00 - \$ 120.00
--	OPERATIONS ANALYST / ACCOUNTING SPECIALIST	\$ 80.00 - \$ 140.00
--	CONTRACT / REGIONAL ADMINISTRATOR	\$ 75.00 - \$ 115.00
--	WORD PROCESSING / SECRETARIAL	\$ 55.00 - \$ 90.00
--	CO-OP / INTERN	\$ 45.00 - \$ 75.00

- 3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B." On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said

invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.

- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21<sup>st</sup>) calendar day after the date the City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.7 **Failure to Pay** – Failure of the City to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10<sup>th</sup>) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter “D” (“Remedy for Nonpayment”) of the Texas Government Code. The City shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant’s services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant’s compensation shall be equitably adjusted as approved by City. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.



- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

#### **ARTICLE 4 OWNERSHIP OF DOCUMENTS**

- 4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City's own risk.
- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the City and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (Texas Government Code, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

**ARTICLE 5**  
**CONSULTANT'S INSURANCE REQUIREMENTS**

- 5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of Exhibit “E,” City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.
- 5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of Exhibit “E,” City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.
- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit “E,” City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage**

– If Project size and scope warrant, and if identified on the checklist located in Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to the City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Such policy shall require the provision of written notice to the City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

**ARTICLE 6  
CONSULTANT'S ACCOUNTING RECORDS**

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to the City as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

**ARTICLE 7  
AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE**

The Consultant agrees that at any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, attached hereto as Exhibit "F" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "F." Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of

Interest Questionnaire, Form CIQ, attached hereto as Exhibit "G" and incorporated herein for all purposes.

## **ARTICLE 8 TERMINATION OF AGREEMENT / REMEDIES**

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of the City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

## **ARTICLE 9 DISPUTE RESOLUTION / MEDIATION**

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

## **ARTICLE 10**

### **INDEMNITY**

**CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND**

EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONSULTANT IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF

TEXAS (THE "JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO CONSULTANT WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

#### **ARTICLE 11 NOTICES**

Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

**Paul Knippel, P.E.**  
Director of Engineering Services  
City of Frisco  
6101 Frisco Square Boulevard; 3<sup>rd</sup> Floor East  
Frisco, Texas 75034

City agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following addresses:

**Brian Coltharp, P.E.**  
Principle  
Freese and Nichols, Inc.  
1701 N. Market Street, Suite 500 LB 51  
Dallas, Texas 75202

Any notice provided in writing under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

## **ARTICLE 12 MISCELLANEOUS**

12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled “A” through “G,” all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 Exhibit “A,” Scope of Services.

12.1.2 Exhibit “B,” Compensation Schedule / Project Billing / Project Budget.

12.1.3 Exhibit “C,” City of Frisco Guidelines for Computer Aided Design and Drafting (CADD).

12.1.4 Exhibit “D,” City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

- 12.1.5 Exhibit "E," City of Frisco Contractor Insurance Guidelines.
- 12.1.7 Exhibit "F," Affidavit.
- 12.1.8 Exhibit "G," Conflict of Interest Questionnaire, Form CIQ.
- 12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 12.3 **Successors and Assigns** – City and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 12.5 **Venue** – This entire Agreement is performable in Collin County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.



- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.14 **No Third Party Beneficiaries** - Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.15 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 herein is conspicuous and the parties have read and understood the same.
- 12.16 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2007-2008 fiscal year. City will give Consultant sixty days (60) notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2007-2008 fiscal year unless and until such funds are budgeted.

**IN WITNESS WHEREOF**, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

**Effective Date:** \_\_\_\_\_

**CITY**

City of Frisco, Texas

By: \_\_\_\_\_

Name: George Purefoy

Title: City Manager

**CONSULTANT**

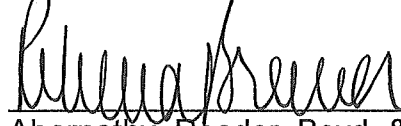
Freese and Nichols, Inc.

By: \_\_\_\_\_

Name: Alan D. Greer, PE

Title: Vice President

**APPROVED AS TO FORM:**



Abernathy, Roeder, Boyd, & Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

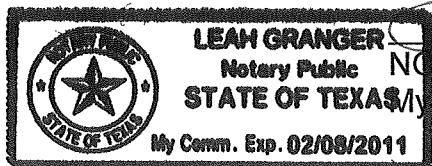
My commission expires: \_\_\_\_\_

STATE OF TEXAS:

COUNTY OF Dallas:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED Alan D. Greer, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 9th DAY OF December, 2009.



Leah K Granger  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS  
My commission expires: 2/8/2011

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**Agreement by and between the City of Frisco, Texas (City)  
and Freese and Nichols, Inc. (Consultant)  
to perform Engineering Design and Preparation of Construction Documents for FM  
3537 20-Inch and 24-Inch Water Improvements (Preston Road to Custer Road)  
(Project)**

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**I. PROJECT DESCRIPTION.**

The Project involves design and engineering for the relocation of water utilities along the proposed Texas Department of Transportation (TxDOT) Right-of-Way for FM 3537, from State Highway 289 (Preston Road) to FM 2478 (Custer Road). In addition, the Project also involves the design of approximately one thousand two hundred fifty linear feet (1,250') of new 24-inch waterline extending south from the intersection of Coit Road and FM 720 south to a proposed connection with an existing 24-Inch waterline. The scope of services outlines the proposed engineering services that will be provided by Consultant in connection with relocation of the existing 20-Inch waterline and other sized existing waterlines along FM 3537 at various locations and the new 24-inch waterline along Coit Road. It is anticipated that the proposed waterlines will be placed in to City-acquired easements.

**II. GENERAL REQUIREMENTS.**

A. Specific design requirements shall be obtained from the City Engineering Design Standards. Consultant will establish and summarize design criteria. City will review design criteria and approve prior to beginning design work on the Project.

**III. TASK SUMMARY, BASIC SERVICES.**

**A. Task One, Project Data Collection –**

- 1.1 Consultant shall obtain As-Built plans for roadway, storm sewer, water and sanitary sewer from City. City will provide Consultant the most recent version of the FM 3537 design plans in both electronic and .pdf format.
- 1.2 Obtain record information and review existing materials, reports and maps obtained from the City that are relevant (as determined by City and Consultant) to the Project. The information and data obtained is to be used in the development of construction drawings and specifications for the Project and includes the following:
  - 1.2.1 Existing water and/or wastewater master plan;
  - 1.2.2 Existing zoning maps;

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- 1.2.3 Available Geographic Information Systems (GIS) information including water, wastewater, storm sewer, property ownership, planimetrics, topographic data, aerial photography, floodplain, zoning and other information applicable to the Project;
- 1.2.4 Existing locator maps and plans for future franchise utilities;
- 1.2.5 Existing maintenance and/or inspection records;
- 1.2.6 City Land Development Code;
- 1.2.7 City Engineering Design Standards, Construction Specifications and Standard Construction Details for water, sanitary sewer, drainage and subgrade;
- 1.2.8 Texas Commission on Environmental Quality (TCEQ) rules/regulations;
- 1.2.9 North Central Texas Council of Governments (NCTCOG) water and wastewater construction specifications and addenda; and
- 1.2.10 Property lines and right-of-way.
- 1.3 Consultant shall obtain plans on ongoing design work adjacent to the Project.
- 1.4 Consultant shall request existing plans from utilities regarding existing power, telephone, cable television, long distance communications and natural gas.
- 1.5 Consultant shall conduct one (1) Project coordination meeting with the City staff and North Texas Municipal Water District (NTMWD) to discuss transfer of easements and system operation.
- 1.6 Consultant shall conduct one (1) kickoff meeting with the City to determine any special conditions that may affect Project design and/or construction, the extent of utility replacement and other items and to develop design criteria.
- 1.7 At the conclusion of the meeting with City, Consultant shall begin preliminary alignment options to determine the scope of survey work.

**B. Task Two, Alignment Selection –**

- 2.1 Consultant shall prepare an overall property map showing existing property lines and easements along the FM 3537 corridor. The property

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

map will include the latest aerial photo background of the Project area. The City will also provide the Consultant the latest aerial photo electronic files from the City GIS System.

- 2.2 Consultant shall contract with a Subsurface Utility Engineering (SUE) sub-consultant to provide Level B SUE on the existing 20-inch City waterline and the 20-Inch NTMWD waterline between SH 289 and FM 2478. SUE services are described and are included in Special Services. Existing SUE data developed by TxDOT will be utilized for all other City waterlines described in subsequent sections.
- 2.3 Consultant will then add the SUE information on the waterlines and information obtained from the City on the horizontal location of other existing utilities to the property map to determine the limits of conflicts between the existing City waterlines and the future FM 3537 right-of-way. Based on initial data provided by TxDOT, the following conflicts between proposed TxDOT FM 3537 facilities and City water utilities are known (TxDOT FM 3537 design plan stationing is used for reference). The preliminary and final design of these conflict areas are included in Basic Services:
  - 2.3.1 Proposed right-of-way and grade conflicts from Station 122+00 to Station 131+00 (Near Preston Road intersection).
  - 2.3.2 Grade conflicts with 12-inch waterline crossing at Station 127+00.
  - 2.3.3 Proposed right-of-way and grade conflicts from Station 163+00 to Station 323+00. These conflicts are with existing 20-inch, 16-inch, 12-inch, 8-inch and 6-inch waterlines and associated appurtenances at various locations along the proposed road project.
  - 2.3.4 Revision of piping and connection at the NTMWD meter vault located at Station 282+50. Based upon review of the TxDOT design files and utility information provided, the NTMWD vault is not in conflict with the proposed roadway and only the piping will need to be adjusted to match the new re-aligned 20-inch waterline.
  - 2.3.5 Grade and right-of-way conflicts with an existing 3-inch waterline between Taft Powell Road and Coit Road.
  - 2.3.6 Grade and right-of-way conflicts with an existing abandoned 6-inch waterline. Portions of or all of this waterline may need to be removed during construction depending on guidance received from TxDOT during the design tasks of the Project.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- 2.3.7 Interconnection to the existing City distribution lines along the roadway project limits.
- 2.3.8 De-conflict and provide new service connections if required along FM 3537.
- 2.3.9 In addition, the following areas have a high potential of being in conflict with the proposed right-of-way line. The exact location of the existing 20-Inch waterline is not known due to level of accuracy in the SUE data provided by TxDOT. However, after the SUE services under this contract are completed, these potential conflict areas may need to be addressed in Final design. Preliminary determination of the extents of these conflict areas is included in Basic Services. Final design (if required) of the replacement sections for these conflict areas are included in Special Services.
  - 2.3.9.1 Initial data provided by TxDOT shows the existing City 20-Inch waterline crossing from the proposed Right-of-way to an existing City waterline easement at approximate TxDOT Station 131+00. However, SUE data performed under this Agreement may show the existing 20-Inch waterline crossing back into City easement further to the east, ultimately requiring additional waterline to be replaced. Based on typical levels of accuracy of the TxDOT existing utility data provided, it is assumed that up to one thousand linear feet (1,000') of additional 20-Inch waterline may need to be replaced. If additional existing waterline is discovered under this task to be in conflict, final design of the replacement for this additional waterline will be performed under the Special Services task described in subsequent sections of the Scope of Services.
  - 2.3.9.2 Initial data provided by TxDOT shows the existing 20-Inch waterline crossing from the proposed Right-of-way to an existing City waterline easement at approximate TxDOT Station 323+00. However, SUE data performed under this contract may show the existing 20-Inch waterline crossing back into a City easement further to the east, ultimately requiring additional waterline to be replaced. In addition, based on initial TxDOT data, a large portion of the existing City waterline easement will be overtaken by the proposed FM 3537 Right-of-way line in this area. Based on typical levels of accuracy of

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

the TxDOT existing utility data provided, and the fact that the City may choose to acquire a full width easement and relocate the line into that new easement, it is assumed that the existing 20-Inch waterline may need to be replaced from Station 323+00 to Custer Road. If it is determined under preliminary design that this additional waterline needs to be replaced, final design of the replacement for this additional waterline will be performed under the Special Services Task described in subsequent sections of the Scope of Services.

- 2.4 Consultant shall then develop up to two (2) schematic-level alignments for the replacement waterlines along FM 3537 and the proposed waterline along Coit Road. One FM 3537 alignment option will be along the north edge of the Right-of-way line and one will be along the south edge. These alignment options and corresponding easement limits required will be added to the property map. In addition, pertinent data for each alignment option such as length, number of parcels crosses, landowners crossed, and significant conflicts with existing facilities will be collected and summarized. The two (2) alignments developed for the replacement 20-Inch waterlines shall assume that the City will take Frisco #2 off-line and the existing transmission 20-Inch waterline will be converted to a distribution line. However, alignment will such that through a combination of valving and small air gaps the line could easily be converted back to a transmission line.
- 2.5 Consultant shall provide three (3) hard copies of the property map, one (1) electronic file of the property map and a summary memo describing the alignment options and recommended alignment to the City at least one (1) week prior to the alignment selection meeting.
- 2.6 Consultant shall conduct one (1) alignment selection meeting with City staff to select the City preferred alignment. The final limits of existing 20-Inch waterline will be determined at this meeting. After this meeting the Consultant shall proceed to the Preliminary Design Task. At this same meeting, the City will provide written direction to the Consultant as to whether the design of the additional length of replacement waterline in Special Services is authorized. Consultant will not perform services relating to the design of the additional length of replacement waterline without written authorization issued by the City.

#### **C. Task Three, Preliminary Design –**

- 3.1 Plot existing topographic features including pavement and utilities on plan and profile sheets (1"=30' horizontal and 1"=5' vertical).



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- 3.2 Preparation of waterline plan and profile drawings of proposed Project stationed along centerline. Profile will show existing ground over the top of pipe. Additionally, information listed in the above Task One and Task Two will be shown, if available and applicable, as determined by City and Consultant.
- 3.3 Design shall reflect lot lines with the appropriate lot information as found on the Collin County Appraisal District website. The exact lot corners will be field-verified or located by the surveyor when an easement is required for that property.
- 3.4 After the 65% design submittal Consultant shall prepare standard details for traffic control methods to be used during construction. These details will be incorporated into the 95% design submittal and subsequent plan sets. The construction contract documents shall still require the construction contractor to develop and submit a full traffic control plan to the City to match their proposed phasing and operations.
- 3.5 After the 65% design submittal Consultant shall prepare an erosion control plan and standard details to be incorporated into the plan set. This plan and details will be incorporated into the 95% design submittal and subsequent plan sets.
- 3.6 Consultant shall submit three (3) full-size and five (5) half-size preliminary construction plans and specifications at the 35% design submittal, the 65% design submittal and the 95% design submittal of the preliminary design for City staff review and comments. In addition, at the 35% design submittal, Consultant shall provide the City one (1) roll-plot ("strip map") showing the plan view of the waterline.
- 3.7 Consultant shall conduct one (1) comment review meeting at the 35% design submittal, the 65% design submittal and the 95% design submittal with City to review and discuss City comments. City will provide comments to Consultant at least one (1) week prior to each meeting.
- 3.8 Consultant shall prepare and submit any Special Condition requirements.
- 3.9 Identify existing easements and proposed and existing Right-of-way along with waterline conflicts with TxDOT proposed improvements and also identify areas that will be reimbursable to the City.
- 3.10 Consultant shall prepare and/or revise the Consultant's Opinion of Probable Construction Cost ("OPCC") based on the 35% design submittal, the 65% design submittal and the 95% design submittal.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- 3.11 Consultant shall incorporate all of the agreed upon City staff review comments received that the 35% design submittal, the 65% design submittal and the 95% design submittal.
- 3.12 Consultant shall coordinate with all existing utility companies of the proposed design in order to take necessary steps to clear the utilities from any conflicts with the Consultant's preliminary design.
- 3.13 Provide TxDOT with two (2) copies of plans and specifications at each submittal phase as described above to allow TxDOT interim reviews of the progress of the utility relocations.
- 3.14 Obtain TxDOT submittals of the progress of FM 3537 design and coordinate the utility plans with the TxDOT plans of the roadway and associated improvements.
- 3.15 Coordinate with Cobb Fendley & Associates, Inc. (TxDOT Utility Coordination Firm) for locations and designs of other proposed utilities within the FM 3537 Right-of-way.
- 3.16 Determine TxDOT reimbursable costs where applicable and prepare TxDOT submittals as required. Attend up to three (3) meetings with TxDOT to discuss reimbursable submittals.
- 3.17 Attend City Utility Coordination meetings after the 35% design submittal, the 65% design submittal and the 95% design submittal (three (3) meetings) and TxDOT Utility Coordination meetings after the 35% design submittal, the 65% design submittal and the 95% design submittal (three (3) meetings).
- 3.18 Consultant shall coordinate with other design consultants who are working on Projects that potentially affect the Preston Road 24" Waterline alignment.
- 3.19 Consultant shall prepare and submit work progress reports and notify the City in writing of any design issues that arise.
- 3.20 Consultant shall maintain routine contact with City staff during the Project preliminary design phase.

**D. Task Four, Final Design –**

- 4.1 Consultant shall incorporate City's agreed upon review comments into the final design.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- 4.2 Development of final quantities and preparation of summary sheets. Consultant shall determine the OPCC estimate based upon the final design.
- 4.3 Consultant shall prepare exhibits and permit application for TxDOT crossing and utility accommodation permits. City shall execute permits and be responsible for all fees associated with the permits.
- 4.4 Consultant shall submit three (3) full-size and three (3) half-size sets of final construction plans, costs and special conditions to the City for final review.
- 4.5 Consultant shall revise and finalize the design, incorporating agreed upon City review comments from the design submittal as stated in preliminary design into the final design.
- 4.6 Upon review and incorporation of City's comments into the final design, Consultant shall submit three (3) full-size sets and three (3) half-size sets of final plans, quantities, costs, specifications and contract documents and special conditions to the City.

**E. Task Five, Bid Phase Services –**

- 5.1 Assist City in securing bids; issue a Notice to Bidders to prospective contractors and vendors listed in Consultant's database of prospective bidders, and to selected plan rooms. Provide a copy of the Notice to Bidders to City for use in notifying construction news publications and publishing appropriate legal notice. The cost for publications in construction news publications and for publishing appropriate legal notice shall be paid for by the City.
- 5.2 Print Bid Documents and distribute to selected plan rooms and to prospective bidders that respond to the Notice to Bidders. Cost of the Bid Documents provided to plan rooms and prospective bidders shall be recouped by the Consultant.
- 5.3 Maintain information on entities that have been issued a set of Bid Documents. Distribute information on plan holders to interested contractors and vendors on request.
- 5.4 Assist City by responding to questions and interpreting Bid Documents. Prepare and issue Addenda to the Bid Documents to plan holders if necessary.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- 5.5 Preliminary Bid Tabulation and Review – Assist City during Bid Opening, making preliminary tabulation of bids and review questionnaires and bids for completeness.
- 5.6 Qualifications Review – Review and evaluate the qualifications of the apparent successful bidder and the proposed major of specialty subcontractors. The review and evaluation will include such factors as work previously completed, equipment that is available for the work, publicly available financial resources, technical experience and responses from references.
- 5.7 Bid Tabulation – Prepare and distribute formal bid tabulation sheets, evaluate bids and make written recommendations to City concerning the award of the contract.
- 5.8 Issue Construction Contract Documents – Prepare and distribute conforming (including all addenda posted) nine (9) full-size (24" x 36") copies of the Construction Contract Documents. These services will include review of Contractor's Bonds, furnishing to the Contractor unsigned Construction Contract Documents and transmitting the Construction Contract Documents to City for signature and distribution. Conformed drawings will also be provided in electronic format.

**F. Task Six, Construction Administration Services –**

- 6.1 Consultant shall attend one (1) Pre-Construction Conference.
- 6.2 Consultant shall provide responses to Requests for Information ("RFI") in order to provide clarification to the City and/or the Contractor.
- 6.3 Visit the site at the request of City to observe the progress and quality of the executed work a maximum of five (5) visits. The final "walk-through" is included in the maximum number of meetings.
- 6.4 Prepare field changes and change orders as requested by City in writing.
- 6.5 Review a maximum of ten (10) Contractor's shop drawings and submittals.
- 6.6 In performing these services, Consultant will endeavor to protect City against defects and deficiencies in the work of the Contractor; Consultant shall immediately report any observed deficiencies to City, however, it is understood that Consultant does not guarantee the Contractor's performance nor is Consultant responsible for the supervision of the Contractor's operation and employees. Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor. Consultant shall

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

not be responsible for the acts or omissions of any person (except Consultant's own employees and/or agents) at the Project site or otherwise performing any work of the Project.

**G. Task Seven, Completion of Record Documents –**

- 7.1 Consultant shall prepare construction Record Documents based on information received from the Construction Contractor within thirty (30) days of substantial completion of construction and provide to the City the items (and quantities as stated) identified in Paragraph VI (A) (6).

**IV. TASK SUMMARY, SPECIAL SERVICES.**

**A. Task Eight, Surveying Services –**

- 8.1 Right of Entry – Before the survey party is engaged in surveying on private property, the Consultant shall send letters to all affected property owners notifying them of the survey party's intent to survey on private property. The Consultant shall provide the City with the name and address of the property owners, as well as the property address of the affected property. Permission to survey on private property shall be obtained from the property owners before surveying is commenced. The letter of permission shall include permission for the Consultant to set iron pins and control monuments for future Right-of-way and/or easements to be acquired by the City at a later date. The Consultant will provide copies of the Right of Entry Letters to the City for the Project files.
- 8.2 Consultant shall tie property corners along the Project; tie visible surface topographic features within one hundred feet (100') of the proposed waterline alignment centerline.
- 8.3 Ownership Data – Research property ownership of the affected parcels and obtain copies of deeds, subdivision plats, Right-of-way maps and ownership addresses along the route. Prepare a landowners Excel spreadsheet to include parcel number and landowner's name and address. Prepare a deed plot of all ownerships, subdivisions and Rights-of-way within one hundred feet (100') either side of the proposed waterline alignment. All properties shall be numbered to match the corresponding list of landowners in the Excel spreadsheet.
- 8.4.1 Ownership Map – Locate property corners of parcels that are affected by the proposed waterline alignment. Calculate property lines, easement lines and Right-of-way lines of existing streets and utilities.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- 8.4 Topographic information for twenty-four thousand seven hundred fifty linear feet (24,750'), including the existing ground and other surface features (including tree lines – 4" or larger) as needed for design. Obtain natural ground elevations and cross-sections every fifty feet (50') along the alignment, and all grade breaks will be surveyed. Collect spot elevations as required to facilitate the generation of one-foot (1') contours.
- 8.4.1 Survey shall include horizontal and vertical location of the existing facilities, including existing pavement, fences, utility appurtenances such as water valves, fire hydrants, manholes, etc. that are within the construction areas.
- 8.4.2 Make a complete topographic survey of all existing features above ground level that would or could affect proposed construction. These features shall include, but are not limited to, above-ground utility appurtenances, manholes (including invert elevations), structures, bridges, culverts, retaining walls, trees, curbs, pavement, sidewalks, fences, property corners, block corners. Also, all buildings, trees, steps and other topographical features which would be of interest to the property owner in discussing the plans with the City must be shown accurately.
- 8.5 Locate underground utilities or structures that may be within the limits of the Project. Such utilities include, but are not limited to, wastewater, water, gas, electric, storm sewer, telephone and television cable. Consultant will contact 1-800-DIG-TESS (or any current number for DIG-TESS if amended) or individual utility companies to mark existing underground utilities in the field and shall show such utilities on the base map either based upon field locations or available construction as-builts. Consultant will show ownership of existing underground utilities (if known) on the plans.
- 8.6 Consultant shall establish vertical and horizontal control at the beginning and end of the proposed alignment and at one thousand foot (1,000') intervals and be based upon the City's primary control and benchmarks. Permanent control points will be set in concrete and will define the X, Y and Z coordinates for the Project. The permanent control points shall be set outside the limits of construction (if possible) and shall be a 5/8" iron rod set with a plastic cap. The control points shall be tied to the existing TxDOT control used in the roadway design. City will provide Consultant electronic and all existing data on the control used for the FM 3537 design for use to incorporate into the survey.
- 8.7 Establish the proposed centerline or a suitable reference base line on the ground as required by the City.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- 8.8 Consultant shall perform an Engineering review of the Surveyor's work.
- 8.9 Consultant shall incorporate survey files and complete reducing data files.
- 8.10 Consultant shall prepare (if determined as necessary by City and Consultant) a maximum of twenty-seven (27) easement descriptions and exhibits each of Permanent and Temporary Construction, in triplicate, for the City.

**B. Task Nine, Subsurface Utility Engineering (SUE) –**

- 9.1 Consultant will subcontract with an SUE firm to provide the following SUE services:
  - 9.1.1 SUE Quality Levels "A" and "B" (QLA & QLB) – provide information for fifteen (15) test hole locations as defined by the Consultant along the proposed alignments and QLB for approximately twenty-one thousand five hundred linear feet (21,500') of the existing 20-Inch waterline paralleling FM 3537. SUE services will be in accordance with the American Society of Consulting Engineers (ASCE) Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data). Subconsultant will excavate test holes by means of non-destructive vacuum excavation methods. Subconsultant will produce a summary sheet containing the coordinates and elevation to the top of the utility at each test hole location with test holes incorporated into the surveyor's topographic survey file. The elevations of the test holes and the horizontal locations shall be tied to the same control as the Project survey which will be tied to the TxDOT roadway project control and datum.

**C. Task Ten, Additional Waterline Design (TxDOT Station 131+00 to 141+00) –**

In the event the SUE data show that the existing 20-Inch waterline is in conflict with the TxDOT Right-of-Way beyond TxDOT Station 131+00 and City staff authorizes the effort in writing, Consultant shall design up to one thousand additional feet (1,000') of waterline replacement to de-conflict the proposed waterline with TxDOT facilities. This design effort shall be in accordance with the tasks set forth in the preliminary and final design tasks, but the effort shall only be authorized in writing by the City under this Special Services Task.

**D. Task Eleven, Additional Waterline Design (TxDOT Station 323+00 to FM 2478) –** In the event the SUE data show that the existing 20-Inch waterline is in conflict with the TxDOT Right-of-way beyond TxDOT Station 323+00 and City staff authorizes the effort in writing, Consultant shall design up to one thousand one hundred additional feet (1,100') of waterline replacement to de-conflict the proposed waterline with TxDOT facilities. This design effort shall be in

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

accordance with the tasks set forth in the preliminary and final design tasks, but the effort shall only be authorized in writing by the City under this Special Services Task.

**V. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES.**

A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

1. **Scope of Services for the Project in relation to Article 3, Section 3.1.4 of the Standard Form Agreement** – In relation to the Project, the parties agree that at the time of the execution of the Agreement, the requirements of the Barriers Act are **not applicable** to the Scope of Services to be performed by Consultant under this Agreement.
2. The design of a new meter vault; if a new vault is determined to be necessary it can be designed as an Additional Service.
3. Right-of-way parcel descriptions, excluding water easements that may be necessary (as determined by City and Consultant).
4. Drainage plans or drainage design, including Drainage Area Map.
5. Detailed Construction Staking.
6. Full-time Construction Inspection Services.
7. Internal inspection of Sanitary Sewer Lines.
8. Trench Excavation Safety Plan.
9. Obtaining access or Right of Entry onto private property that is either in or out of an existing easement, unless noted in the Scope of Services.
10. Review of Contractor's monthly and final payment requests and preparation of monthly pay estimates.
11. Utility Locate Service.
12. Construction Phasing plan.
13. Structural design, other than creek crossings.
14. HEC II and Hydraulic Studies.
15. Creek bed / bank stabilization.
16. Drainage Studies.
17. Public Meetings, unless otherwise noted in the Scope of Services.
18. Tree Survey, unless otherwise noted in the Scope of Services.
19. Permits required for construction except for preparation of TxDOT permits as described in the Scope of Services.
20. Environmental Studies.

**VI. DELIVERABLES.**



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- A. **Required Deliverables** – At the completion of Task One (1) through Task Eleven (11), Consultant shall ensure the delivery of the following products to the City:
1. **Task Two, Alignment Selection** – Consultant shall prepare and submit ownership map, memorandum and recommended alignment options.
  2. **Task Three, Preliminary Design** –
    - 2.1 **35% Completion** – Consultant shall submit base drawings with topographic survey and existing known utilities. Consultant will also provide a preliminary sanitary sewer and/or water layout for City review and discussion regarding design options.
    - 2.2 **65% Completion** – Consultant shall provide preliminary designed sanitary sewer and/or water plan and profile and OPCC. The design will also show proposed water or sanitary sewer and construction easements necessary for construction. In addition to hard copy documents, one (1) copy of these drawings shall be submitted to City in .pdf format on compact diskette.
    - 2.3 **95% Completion** – Consultant shall provide preliminary designed sanitary sewer and/or water plan and profile and revised OPCC to include the 95% completion design elements. The design will show the final creek crossing including details. Consultant shall also provide final water or sanitary sewer and construction easement documents. In addition to hard copy documents, one (1) copy of these drawings and documents shall be submitted to City in .pdf format on compact diskette.
  3. **Task Four, Final Design** – Provide four (4) full-size sets and three (3) half-size sets of final signed and sealed plans and specifications for the construction of the Project.
  4. **Task Five, Bid Phase Services** – Consultant shall provide the following: (1) plans to the Contractors for review and bidding; (2) a recommendation for bid award; (3) a bid tabulation of all bids received; and (4) issued for construction documents as described in Task Five.
  5. **Task Six, Construction Administration Services** – Consultant shall provide City with two (2) hard copy documents of all RFI's submitted for review and comment.
  6. **Task Seven, Completion of Record Documents** – Consultant to provide the following to City within thirty (30) days of substantial completion of construction: (1) One (1) set of construction Record Documents on 24" x 36" mylar; (2) Two (2) sets of construction Record Documents on 24" x 36" bond

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

paper; (3) One (1) set of construction Record Documents and Contract Documents (front end and technical specifications) in digital (AutoCADD) format, .pdf format and Microsoft Word format. Provide Geographical Information Systems (GIS) shape files of the Record Documents waterline alignments to City so that the City may provide these files to TxDOT as requested during the Project closeout.

7. **Task Eight, Surveying Services** – Consultant shall submit to City the Topographic Survey, including field notes, field sketches and hard copy of the coordinate lists of points located in the field and a digital ASCII point list. In addition, Consultant shall submit to City a maximum of twenty-seven (27) easement descriptions and exhibits necessary for the construction of the Project, as determined by City and Consultant.
8. **Task Nine, Subsurface Utility Engineering (SUE) Services** – Subconsultant will submit a summary sheet containing the coordinates and elevation to the top of the utility at each test hole location. The coordinates and elevations will be in the same coordinate system as the TxDOT Project control.
9. **Task Ten, Additional Waterline Design (TxDOT Station 131+00 to 141+00)** – Subconsultant will submit waterline plan and profile sheets as required to facilitate the additional waterline design if authorized by the City.
10. **Task Eleven, Additional Waterline Design (TxDOT Station 323+00 to FM 2478)** – Subconsultant will submit waterline plan and profile sheets as required to facilitate the additional waterline design if authorized by the City.

**VII. PROJECT LABOR ALLOCATION.**

<b>Task</b>	<b>Subtask</b>	<b>Labor Hours</b>
<b>TASK 1</b>	Project Data Collection	112.0
<b>TASK 2</b>	Alignment Selection	242.0
<b>TASK 3</b>	Preliminary Design	1,342.0
<b>TASK 4</b>	Final Design	137.0
<b>TASK 5</b>	Bid Phase Services	235.0

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

<b>Task</b>	<b>Subtask</b>	<b>Labor Hours</b>
<b><i>TASK 6</i></b>	Construction Administration Services	109.0
<b><i>TASK 7</i></b>	Completion of Record Documents	85.0
<b><i>TASK 8</i></b>	Topographic Survey	Special Services
<b><i>TASK 9</i></b>	Easement Exhibits	Special Services
<b><i>TASK 10</i></b>	Geotechnical Services	Special Services
<b><i>GRAND TOTAL</i></b>		2,262.0

**VIII. ATTACHMENTS.**

- A. Consultant's Opinion of Probable Construction Cost, dated September 24, 2009.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**ATTACHMENT "A"**  
**CONSULTANT'S OPINION OF PROBABLE CONSTRUCTION COST**  
**FM 3537 WATERLINE RELOCATION**

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
<b>A</b>	<b><u>WATERLINE</u></b>				
A.1	24" PVC WATERLINE	1,250.00	LF	\$ 120.00	\$ 150,000.00
A.2	20" PVC WATERLINE	16,830.00	LF	\$ 100.00	\$ 1,683,000.00
A.3	16" PVC WATERLINE	280.00	LF	\$ 80.00	\$ 22,400.00
A.4	12" PVC WATERLINE	300.00	LF	\$ 60.00	\$ 18,000.00
A.5	8" PVC WATERLINE	3,350.00	LF	\$ 40.00	\$ 134,000.00
A.6	POTENTIAL 20" WATERLINE	2,100.00	LF	\$ 100.00	\$ 210,000.00
	<b><u>SUBTOTAL - WATERLINE</u></b>				<b><u>\$ 2,217,400.00</u></b>
<b>B</b>	<b><u>WATERLINE REMOVAL</u></b>				
B.1	REMOVAL OF EXISTING AC WATERLI	7,000.00	LF	\$ 30.00	\$ 210,000.00
B.2	REMOVAL OF EXISTING NON-AC WA	11,350.00	LF	\$ 15.00	\$ 170,250.00
	<b><u>SUBTOTAL - WATERLINE REMOVAL</u></b>				<b><u>\$ 380,250.00</u></b>
<b>C</b>	<b><u>STEEL CASING PIPE</u></b>				
C.1	42" CASING BY BORE	50.00	LF	\$ 600.00	\$ 30,000.00
C.2	36" CASING BY BORE	350.00	LF	\$ 500.00	\$ 175,000.00
C.3	20" CASING BY BORE	120.00	LF	\$ 300.00	\$ 36,000.00
C.4	42" CASING BY BORE	70.00	LF	\$ 250.00	\$ 17,500.00
C.5	36" CASING BY BORE	330.00	LF	\$ 200.00	\$ 66,000.00
C.6	20" CASING BY BORE	180.00	LF	\$ 125.00	\$ 22,500.00
	<b><u>SUBTOTAL - STEEL CASING PIPE</u></b>				<b><u>\$ 347,000.00</u></b>
<b>D</b>	<b><u>APPURTENANCES</u></b>				
D.1	24" BUTTERFLY VALVE	1.00	EA	\$ 7,000.00	\$ 7,000.00
D.2	20" BUTTERFLY VALVE	10.00	EA	\$ 5,800.00	\$ 58,000.00
D.3	16" BUTTERFLY VALVE	2.00	EA	\$ 4,000.00	\$ 8,000.00
D.4	12" GATE VALVE	2.00	EA	\$ 2,000.00	\$ 4,000.00
D.5	8" GATE VALVE	8.00	EA	\$ 1,125.00	\$ 9,000.00
D.6	LONG SIDE SERVICE	10.00	EA	\$ 3,000.00	\$ 30,000.00
D.7	SHORT SIDE SERVICE	5.00	EA	\$ 1,000.00	\$ 5,000.00
D.8	FIRE HYDRANT ASSY AND VALVE	30.00	EA	\$ 3,500.00	\$ 105,000.00
D.9	COMBINATION AIR VALVE / VAULT	5.00	EA	\$ 15,000.00	\$ 75,000.00
D.10	REVISING OF PIPING AT NTMWD ME	1.00	LS	\$ 12,000.00	\$ 12,000.00
D.11	SEEDING	41.00	AC	\$ 1,500.00	\$ 61,500.00
D.12	SWPPP PREP AND IMPLEMENTATION	1.00	LS	\$ 25,000.00	\$ 25,000.00
	<b><u>SUBTOTAL - APPURTENANCES</u></b>				<b><u>\$ 399,500.00</u></b>
<b><u>PROJECT SUBTOTAL</u></b>					<b><u>\$ 3,344,150.00</u></b>
<b>CONTINGENCY AT 20%</b>					<b>\$ 668,830.00</b>
<b>MOBILIZATION AT 5%</b>					<b>\$ 200,649.00</b>
<b><u>PROJECT GRAND TOTAL</u></b>					<b><u>\$ 4,213,629.00</u></b>

**EXHIBIT "B"**  
**COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET**

Agreement by and between the City of Frisco, Texas (City)  
 and Freese and Nichols, Inc. (Consultant)  
 to perform Engineering Design and Preparation of Construction Documents for FM  
 3537 20-Inch and 24-Inch Water Improvements (Preston Road to Custer Road)  
 (Project)

**I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.**

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
December 15, 2009	--	City Council approval of a Resolution authorizing the City Manager to execute the Agreement; City issues Notice to Proceed to Consultant.
December 31, 2009	--	Consultant's receipt of fully executed Agreement.
January 31, 2010	\$ 12,866.00	<b>Task One, Project Data Colleciton</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
February 26, 2010	\$ 30,470.00	<b>Task Two, Alignment Selection</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
March 31, 2010	\$ 63,096.00	<b>Task Eight, Surveying Services</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
March 31, 2010	\$ 94,644.00	<b>Task Nine, Subsurface Utility Engineering</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
April 30, 2010	\$ 40,498.00	<b>Task Three, Preliminary Design (35% Design Submittal)</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
May 31, 2010	\$ 38,812.50 (\$ 1,437.50 @ 27 units, Not-to-Exceed specified total amount)	<b>Task Four, Surveying Services, Easement Exhibits</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).

**EXHIBIT "B"**  
**COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET**

<b>MONTH, DATE, YEAR</b>	<b>DOLLAR AMOUNT</b>	<b>TASK COMPLETED</b>
<b>May 31, 2010</b>	<b>\$ 65,537.00</b>	<b>Task Three, Preliminary Design (65% Design Submittal)</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
<b>July 31, 2010</b>	<b>\$ 61,322.00</b>	<b>Task Three, Preliminary Design (95% Design Submittal)</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
<b>August 31, 2010</b>	<b>\$ 17,925.00</b>	<b>Task Four, Final Design</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
<b>August 31, 2010</b>	<b>\$ 20,000.00</b> <i>(If authorized in writing by the City)</i>	<b>Task Ten and Eleven, Additional Waterline Design</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
<b>September 30, 2010</b>	<b>\$ 21,010.00</b>	<b>Task Five, Bid Phase Services</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
<b>August 31, 2011</b>	<b>\$ 15,850.00</b>	<b>Task Six, Construction Administration Services</b> (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
<b>September 30, 2011</b>	<b>\$ 13,700.00</b> <i>(5% of Consultant's Fee for Basic Services)</i>	<b>Task Seven, Completion of Record Documents.</b>
<b>TOTAL CONSULTANT'S FEE (NOT-TO-EXCEED)</b>	<b>\$ 495,730.50</b>	

**EXHIBIT "B"**  
**COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET**

**II. PROJECT BUDGET SUMMARY.**

**A. Basic Services.**

1. Project Data Collection.	\$ 12,866.00
2. Alignment Selection.	\$ 30,470.00
3. Preliminary Design.	
3.1 35% Design Submittal.	\$ 40,498.00
3.2 65% Design Submittal.	\$ 65,537.00
3.3 95% Design Submittal.	\$ 61,322.00
4. Final Design.	\$ 17,925.00
5. Bid Phase Services.	\$ 21,010.00
6. Construction Administration.	\$ 15,850.00
7. Completion of Record Documents.	\$ 13,700.00
8. <u>Subtotal, Basic Services (Lump Sum, Not-to-Exceed).</u>	<u>\$ 279,178.00</u>

**B. Special Services.**

1. Surveying Services.	\$ 63,096.00
2. Subsurface Utility Engineering.	\$ 94,644.00
3. Easement Exhibits (\$ 1,437.50 per unit). <i>(Not-to-Exceed 27 exhibits)</i>	\$ 38,812.50
4. Additional Waterline Design Services. <i>(If authorized in writing by City)</i>	\$ 20,000.00
5. <u>Subtotal, Special Services (Cost-Plus Multiplier,     Not-to-Exceed).</u>	<u>\$ 216,552.50</u>

**C. Direct Expenses.**

1. <u>Subtotal, Direct Expenses (Not-to-Exceed).</u>	<u>\$ 0.00</u>
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**D. Project Grand Total (Not-to-Exceed).** **\$ 495,730.50**

**EXHIBIT "C"**  
**CITY OF FRISCO**  
**GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)**

1. Files shall be submitted in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
  - a. Pre-Construction/As-Built Plans and/or Record Documents:
    - i. Layers from Final Plat Requirements as Applicable to Project Type.
    - ii. Water Utility Features.
    - iii. Sanitary Sewer Features.
    - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be continuous (e.g. no dashed lines in required layers) and complete (connecting lines should meet at corners) within the subdivision/project. Layers outside of project/subdivision boundary may be dashed in CAD data as required for Final Plats by Frisco Subdivision Ordinance Section 5.02.



**EXHIBIT "D"**  
**CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND  
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES**

- I. **CONSULTANT'S RESPONSIBILITY.** The Consultant shall be solely responsible for the auditing of all direct expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to the City for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES.**

- A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

- B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.
- C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- D. **In-House Reproduction** - Consultant shall make arrangements with the City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number or reproductions,

**EXHIBIT "D"**  
**CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND  
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES**

the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

**EXHIBIT "D"**  
**CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND  
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES**

**III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.**

- A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

**IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.**

- A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by the City's Project Manager.
- B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and the City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

**EXHIBIT "E"**  
**CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES**

**I. REQUIREMENT OF GENERAL LIABILITY INSURANCE –**

- A. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance.
- E. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail.
- F. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of the insurance.

**II. INSURANCE COMPANY QUALIFICATION –** All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

**III. CERTIFICATE OF INSURANCE –** A Certificate of Insurance evidencing the required insurance shall be submitted with the contractor's bid or response to proposal. If the contract is renewed or extended by the City a Certificate of Insurance shall also be provided to the City prior to the date the contract is renewed or extended.

**EXHIBIT "E"**  
**CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES**

**IV. INSURANCE CHECKLIST** – "X" means that the following coverage is required for this Agreement.

	<b>Coverage Required</b>	<b>Limits</b>
<u>  X  </u>	1. Worker's Compensation & Employer's Liability	<ul style="list-style-type: none"> <li>▪ Statutory Limits of the State of Texas</li> </ul>
<u>  X  </u>	2. General Liability	<ul style="list-style-type: none"> <li>▪ Minimum \$1,000,000.00 each occurrence;</li> <li>▪ Minimum \$2,000,000.00 in the aggregate.</li> </ul>
<u>      </u>	3. XCU Coverage	<ul style="list-style-type: none"> <li>▪ Minimum \$1,000,000.00 each occurrence;</li> <li>▪ Minimum \$2,000,000.00 in the aggregate.</li> </ul>
<u>  X  </u>	4. Professional Liability	<ul style="list-style-type: none"> <li>▪ Minimum \$ 1,000,000.00 each claim;</li> <li>▪ Minimum \$ 2,000,000.00 in the aggregate.</li> </ul>
<u>      </u>	5. Umbrella Coverage or Excess Liability Coverage	<ul style="list-style-type: none"> <li>▪ An amount of \$ 2,000,000.00.</li> </ul>
<u>  X  </u>	6. City named as additional insured on General Liability Policy. This coverage is primary to all other coverage the City may possess.	
<u>  X  </u>	7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance.	
<u>  X  </u>	8. Thirty (30) days notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.	
<u>  X  </u>	9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).	
<u>  X  </u>	10. The Certificate of Insurance must state the project title and bid number.	
<u>      </u>	11. Other Insurance Requirements (State Below):	

EXHIBIT "F"  
AFFIDAVIT

THE STATE OF TEXAS

§  
§  
§

THE COUNTY OF Dallas

I, Alan D. Greer, a member of the Consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

\_\_\_\_\_ Ownership of 10% or more of the voting shares of the business entity.

\_\_\_\_\_ Ownership of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.

\_\_\_\_\_ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

\_\_\_\_\_ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars (\$25,000.00).

\_\_\_\_\_ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.

\_\_\_\_\_ Other: \_\_\_\_\_

☒ None of the Above.

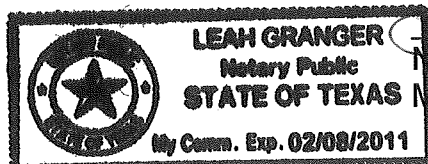
Upon filing this affidavit with the City of Frisco, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this Ninth day of December, 2009.

Alan D. Greer, Vice President  
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared Alan D. Greer and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.


Sworn to and subscribed before me on this 9<sup>th</sup> day of December, 2009.



Leah K. Granger  
Notary Public in and for the State of Texas  
My commission expires: 2/8/2011

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor or other person doing business with local governmental entity		<b>FORM CIQ</b>
<p>This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.</p> <p>By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<b>OFFICE USE ONLY</b>  Date Received:	
<div style="border: 1px solid black; padding: 2px;"> <b>1</b> Name of person doing business with local governmental entity.           </div> <div style="font-family: cursive; font-size: 1.2em; margin-top: 10px;">             Freese and Nichols, Inc.           </div>		
<div style="border: 1px solid black; padding: 2px;"> <b>2</b> <div style="display: flex; align-items: center; margin-top: 10px;"> <input checked="" style="margin-right: 10px;" type="checkbox"/>           Check this box if you are filing an update to a previously filed questionnaire.         </div> <p style="font-size: 0.8em; margin-top: 10px;">             (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)           </p> </div>		
<div style="border: 1px solid black; padding: 2px;"> <b>3</b> Describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money.         </div> <div style="font-family: cursive; font-size: 1.5em; margin-top: 20px;">             None           </div>		
<div style="border: 1px solid black; padding: 2px;"> <b>4</b> Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire.         </div> <div style="font-family: cursive; font-size: 1.5em; margin-top: 20px;">             None           </div>		

**EXHIBIT "G"**  
**CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ**

<p><b>CONFLICT OF INTEREST QUESTIONNAIRE</b></p> <p>For vendor or other person doing business with local governmental entity</p>	<p><b>FORM CIQ</b></p> <p>Page 2</p>
<p><b>5</b> Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)</p> <p>This section, item 5 including subparts A, B, C &amp; D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p> <p>D. Describe each affiliation or business relationship.</p> <p style="margin-left: 40px;">None</p>	
<p><b>6</b> Describe any other affiliation or business relationship that might cause a conflict of interest.</p> <p style="margin-left: 40px;">None</p>	
<p><b>7</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"><div style="text-align: center;"> _____ Signature of person doing business with the governmental entity</div><div style="text-align: center;"><u>12-9-09</u> _____ Date</div></div>	

Amended 01/13/2008